REMARKS

Presently, claims 1-7 stand rejected. Claim 2 has been amended. Claims 8-20 are newly added. Claims 1-20 are pending in the application. Favorable consideration in view of the following remarks is earnestly solicited.

Rejection Under 35 U.S.C. § 103(a) over Sousa et al. in view of Schwab et al.:

In section 1 of the Office Action dated March 17, 2010, the Examiner has rejected claims 1-3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Sousa et al. in view of Schwab et al. (Animicrob. Agents Chemother). Because the references fail to disclose all of the claimed limitations, and because the references are in widely divergent fields, it is respectfully requested that this rejection be reconsidered and withdrawn.

First, the references fail to teach of suggest all of the claimed limitations. The instant claims recite that the solution contain not more than 0.2 percent by weight chloride. This limitation is not disclosed by either Sousa et al. or Schwab et al. One required criteria of establish a *prima facia* case of obviousness is that the prior art references (or references when combines) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Here the references are silent regarding a solution having a chloride concentration of not more than 0.2 weight percent. Additionally, there lacks any further evidence indicating that the solutions utilize, or contemplated such a low level of chloride concentration.

Second, the cited reference are in widely divergent fields and should not be combined. As noted in section 1 of the Office Action dated March 17, 2010, Sousa et al. does not disclose an ophthalmic solution containing the specific peptides claimed by the instant application. Schwab et al. is relied upon to teach specific peptides. However, Schwab et al. is directed towards the treatment of lung infections due to cystic fibrosis and does not ophthalmic solutions. In fact, Schwab et al. indicates that the preferred delivery method is via aerosolized drug delivery system. Aerosolized drugs for the treatment of cystic fibrosis are not in the same endeavor as ophthalmic solutions. By contrast, the instant invention relates to a ophthalmic solution that increases comfort by utilized a lower concentration of a preservative (to avoid eye irritation) while utilizing a non-preserving agent (the peptides) that enhance the effectiveness of the preservative. As

such, one skilled in the art of ophthalmic solutions would not look to the field of cystic fibrosis treatment. Furthermore, neither reference discloses the problem of eye irritation being associated with increased concentrations of preservatives.

Finally, regarding newly added claims 8, 15 and 20, the references are silent regarding a solution comprising the peptide SEQ ID NO. 3. Being that this limitation is not taught or suggested by the references of record, it is suggested that the claims are patentable over the references.

For at least these reasons, reconsideration of the rejection is earnestly solicited.

Rejection Under 35 U.S.C. § 103(a) over De Bruiju et al. in view of Schwab et al.:

In section 2 of the Office Action dated March 17, 2010, the Examiner has rejected claims 1-7 as being unpatentable over De Bruiju et al. (WO0007634) in view of Schwab et al. (Animicrob. Agents Chemother). Because the references fail to disclose all of the claimed limitations, and because the references are in widely divergent fields, it is respectfully requested that this rejection be reconsidered and withdrawn.

First, the references fail to teach of suggest all of the claimed limitations. The instant claims recite that the solution contain not more than 0.2 percent by weight chloride. This limitation is not disclosed by either De Bruiju et al. or Schwab et al. One required criteria of establish a *prima facia* case of obviousness is that the prior art references (or references when combines) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Here the references are silent regarding a solution having a chloride concentration of not more than 0.2 weight percent. Additionally, there lacks any further evidence indicating that the solutions utilize, or contemplated such a low level of chloride concentration.

Second, the cited reference are in widely divergent fields and should not be combined. There lacks clarification as to why one skilled in the art would look to the teachings of Schwab et al. and combine those teachings with De Bruiju et al. as suggested.

As noted in section 2 of the Office Action dated March 17, 2010, De Bruiju et al. does not disclose an ophthalmic solution containing the specific peptides claimed by the instant application. Schwab et al. is relied upon to teach specific peptides. However,

Schwab et al. is directed towards the treatment of lung infections due to cystic fibrosis and does not ophthalmic solutions. In fact, Schwab et al. indicates that the preferred delivery method is via aerosolized drug delivery system. Aerosolized drugs for the treatment of cystic fibrosis are not in the same endeavor as ophthalmic solutions. By contrast, the instant invention relates to a ophthalmic solution that increases comfort by utilized a lower concentration of a preservative (to avoid eye irritation) while utilizing a non-preserving agent (the peptides) that enhance the effectiveness of the preservative. As such, one skilled in the art of ophthalmic solutions would not look to the field of cystic fibrosis treatment. Furthermore, neither reference discloses the problem of eye irritation being associated with increased concentrations of preservatives.

Finally, regarding newly added claims 8, 15 and 20, the references are silent regarding a solution comprising the peptide SEQ ID NO. 3. Being that this limitation is not taught or suggested by the references of record, it is suggested that the claims are patentable over the references.

For at least these reasons, reconsideration of the rejection is earnestly solicited.

Rejection Under 35 U.S.C. § 103(a) over Sousa et al. in view of Schwab et al. and in further view of De Bruiju et al.:

In section 3 of the Office Action dated March 17, 2010, the Examiner has rejected claims 1-7 as being unpatentable over Sousa et al. in view of Schwab et al. (Animicrob. Agents Chemother) and in further view of De Bruiju et al. (WO0007634). As discussed above, the references fail to teach all of the claimed limitations. Further as discussed above, Schwab et al. is in a widely divergent field from the instant invention, Sousa et al. and De Bruiju et al. making the proposed combination improper. For at least these reasons, reconsideration of the rejection is earnestly solicited.

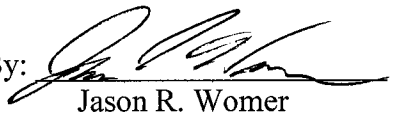
Conclusion:

The remaining art of record and not relied upon has been reviewed. It is believed that the foregoing is a complete response and that the claims are in condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case.

Applicant appreciates the opportunity to call the Examiner but believes that this amendment to the claims and the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

It is believed that the shortened statutory period of two months was a typographical error and that a three-month statutory period in accordance with MPEP 710.02(b) was intended. As such, the need for any extensions of time were calculated using the three-month statutory period. However, in the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefore and authorizes that any changes be made to Deposit Account No.: 50-3010.

Respectfully submitted,
HISCOCK & BARCLAY, LLP

By: 

Jason R. Womer
Reg. No. 60,149
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604
Tel: (585) 295-4400 x 4306
Fax: (585) 295-8431